

**Introduced by Senator Poochigian**February 9, 2005

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An act to amend Section 3201.7 of the Labor Code, relating to workers' compensation.

## LEGISLATIVE COUNSEL'S DIGEST

SB 177, as introduced, Poochigian. Workers' compensation: alternative dispute resolution: State of California.

Existing workers' compensation law requires employers to secure the payment of workers' compensation, including medical treatment, for injuries incurred by their employees that arise out of, or in the course of, employment.

Existing law authorizes labor-management agreements between an employer or groups of employers and a union that is the recognized or certified exclusive bargaining representative that establishes an alternate dispute resolution system governing disputes between employees and employers or their insurers in connection with workers' compensation instead of the hearing before the Workers' Compensation Appeals Board and its workers' compensation administrative law judges.

This bill would authorize the state in its capacity as an employer, to enter into similar agreements with the recognized or certified exclusive bargaining representatives of its employees.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 3201.7 of the Labor Code is amended to  
2 read:

1 3201.7. (a) Except as provided in subdivision (b), the  
2 Department of Industrial Relations and the courts of this state  
3 shall recognize as valid and binding any labor-management  
4 agreement that meets all of the following requirements:

5 (1) The labor-management agreement has been negotiated  
6 separate and apart from any collective bargaining agreement  
7 covering affected employees.

8 (2) The labor-management agreement is restricted to the  
9 establishment of the terms and conditions necessary to  
10 implement this section.

11 (3) The labor-management agreement has been negotiated in  
12 accordance with the authorization of the administrative director  
13 pursuant to subdivision (d), between an employer or groups of  
14 employers and a union that is the recognized or certified  
15 exclusive bargaining representative that establishes any of the  
16 following:

17 (A) An alternative dispute resolution system governing  
18 disputes between employees and employers or their insurers that  
19 supplements or replaces all or part of those dispute resolution  
20 processes contained in this division, including, but not limited to,  
21 mediation and arbitration. Any system of arbitration shall provide  
22 that the decision of the arbiter or board of arbitration is subject to  
23 review by the appeals board in the same manner as provided for  
24 reconsideration of a final order, decision, or award made and  
25 filed by a workers' compensation administrative law judge  
26 pursuant to the procedures set forth in Article 1 (commencing  
27 with Section 5900) of Chapter 7 of Part 4 of Division 4, and the  
28 court of appeals pursuant to the procedures set forth in Article 2  
29 (commencing with Section 5950) of Chapter 7 of Part 4 of  
30 Division 4, governing orders, decisions, or awards of the appeals  
31 board. The findings of fact, award, order, or decision of the  
32 arbitrator shall have the same force and effect as an award, order,  
33 or decision of a workers' compensation administrative law judge.  
34 Any provision for arbitration established pursuant to this section  
35 shall not be subject to Sections 5270, 5270.5, 5271, 5272, 5273,  
36 5275, and 5277.

37 (B) The use of an agreed list of providers of medical treatment  
38 that may be the exclusive source of all medical treatment  
39 provided under this division.

1 (C) The use of an agreed, limited list of qualified medical  
2 evaluators and agreed medical evaluators that may be the  
3 exclusive source of qualified medical evaluators and agreed  
4 medical evaluators under this division.

5 (D) Joint labor management safety committees.

6 (E) A light-duty, modified job, or return-to-work program.

7 (F) A vocational rehabilitation or retraining program utilizing  
8 an agreed list of providers of rehabilitation services that may be  
9 the exclusive source of providers of rehabilitation services under  
10 this division.

11 (b) (1) Nothing in this section shall allow a labor-management  
12 agreement that diminishes the entitlement of an employee to  
13 compensation payments for total or partial disability, temporary  
14 disability, vocational rehabilitation, or medical treatment fully  
15 paid by the employer as otherwise provided in this division; nor  
16 shall any agreement authorized by this section deny to any  
17 employee the right to representation by counsel at all stages  
18 during the alternative dispute resolution process. The portion of  
19 any agreement that violates this paragraph shall be declared null  
20 and void.

21 (2) The parties may negotiate any aspect of the delivery of  
22 medical benefits and the delivery of disability compensation to  
23 employees of the employer or group of employers that are  
24 eligible for group health benefits and nonoccupational disability  
25 benefits through their employer.

26 (c) (1) Subdivision (a) shall apply only to the following:

27 ~~(1)~~

28 (A) An employer developing or projecting an annual workers'  
29 compensation insurance premium, in California, of fifty thousand  
30 dollars (\$50,000) or more, and employing at least 50 employees,  
31 or any employer that paid an annual workers' compensation  
32 insurance premium, in California, of fifty thousand dollars  
33 (\$50,000), and employing at least 50 employees in at least one of  
34 the previous three years.

35 ~~(2)~~

36 (B) Groups of employers engaged in a workers' compensation  
37 safety group complying with Sections 11656.6 and 11656.7 of  
38 the Insurance Code, and established pursuant to a joint labor  
39 management safety committee or committees, that develops or

1 projects annual workers' compensation insurance premiums of  
2 five hundred thousand dollars (\$500,000) or more.

3 ~~(3)–~~

4 (C) Employers or groups of employers, including cities and  
5 counties, that are self-insured in compliance with Section 3700  
6 that would have projected annual workers' compensation costs  
7 that meet the requirements of, and that meet the other  
8 requirements of, ~~paragraph (1) subparagraph (A)~~ in the case of  
9 employers, or ~~paragraph (2) subparagraph (B)~~ in the case of  
10 groups of employers.

11 *(2) Subparagraph (A) of paragraph (3) of subdivision (a) shall*  
12 *apply to the state, in its capacity as an employer.*

13 (d) Any recognized or certified exclusive bargaining  
14 representative in an industry not covered by Section 3201.5, may  
15 file a petition with the administrative director seeking permission  
16 to negotiate with an employer or group of employers to enter into  
17 a labor-management agreement pursuant to this section. The  
18 petition shall specify the bargaining unit or units to be included,  
19 the names of the employers or groups of employers, and shall be  
20 accompanied by proof of the labor union's status as the exclusive  
21 bargaining representative. The current collective bargaining  
22 agreement or agreements shall be attached to the petition. The  
23 petition shall be in the form designated by the administrative  
24 director. Upon receipt of the petition, the administrative director  
25 shall promptly verify the petitioner's status as the exclusive  
26 bargaining representative. If the petition satisfies the  
27 requirements set forth in this subdivision, the administrative  
28 director shall issue a letter advising each employer and labor  
29 representative of their eligibility to enter into negotiations, for a  
30 period not to exceed one year, for the purpose of reaching  
31 agreement on a labor-management agreement pursuant to this  
32 section. The parties may jointly request, and shall be granted, by  
33 the administrative director, an additional one-year period to  
34 negotiate an agreement.

35 (e) No employer may establish or continue a program  
36 established under this section until it has provided the  
37 administrative director with all of the following:

38 (1) Upon its original application and whenever it is  
39 renegotiated thereafter, a copy of the labor-management

1 agreement and the approximate number of employees who will  
2 be covered thereby.

3 (2) Upon its original application and annually thereafter, a  
4 statement signed under penalty of perjury, that no action has been  
5 taken by any administrative agency or court of the United States  
6 to invalidate the labor-management agreement.

7 (3) The name, address, and telephone number of the contact  
8 person of the employer.

9 (4) Any other information that the administrative director  
10 deems necessary to further the purposes of this section.

11 (f) No collective bargaining representative may establish or  
12 continue to participate in a program established under this section  
13 unless all of the following requirements are met:

14 (1) Upon its original application and annually thereafter, it has  
15 provided to the administrative director a copy of its most recent  
16 LM-2 or LM-3 filing with the United States Department of  
17 Labor, where such filing is required by law, along with a  
18 statement, signed under penalty of perjury, that the document is a  
19 true and correct copy.

20 (2) It has provided to the administrative director the name,  
21 address, and telephone number of the contact person or persons  
22 of the collective bargaining representative or representatives.

23 (g) Commencing July 1, 2005, and annually thereafter, the  
24 Division of Workers' Compensation shall report to the Director  
25 of Industrial Relations the number of labor-management  
26 agreements received and the number of employees covered by  
27 these agreements.

28 (h) By June 30, 2006, and annually thereafter, the  
29 administrative director shall prepare and notify Members of the  
30 Legislature that a report authorized by this section is available  
31 upon request. The report based upon aggregate data shall include  
32 the following:

33 (1) Person hours and payroll covered by agreements filed.

34 (2) The number of claims filed.

35 (3) The average cost per claim shall be reported by cost  
36 components whenever practicable.

37 (4) The number of litigated claims, including the number of  
38 claims submitted to mediation, the appeals board, or the court of  
39 appeal.

1 (5) The number of contested claims resolved prior to  
2 arbitration.

3 (6) The projected incurred costs and actual costs of claims.

4 (7) Safety history.

5 (8) The number of workers participating in vocational  
6 rehabilitation.

7 (9) The number of workers participating in light-duty  
8 programs.

9 (10) Overall worker satisfaction.

10 The division shall have the authority to require employers and  
11 groups of employers participating in labor-management  
12 agreements pursuant to this section to provide the data listed  
13 above.

14 (i) The data obtained by the administrative director pursuant to  
15 this section shall be confidential and not subject to public  
16 disclosure under any law of this state. However, the Division of  
17 Workers' Compensation shall create derivative works pursuant to  
18 subdivisions (f) and (g) based on the labor-management  
19 agreements and data. Those derivative works shall not be  
20 confidential, but shall be public. On a monthly basis, the  
21 administrative director shall make available an updated list of  
22 employers and unions entering into labor-management  
23 agreements authorized by this section.